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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,782	02/09/2006	Frederic Nefel	2590-148	7591
23117 7590 01/09/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/565,782

Applicant(s)

NEFTEL ET AL.

Examiner

Laura A. Bouchelle

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Regarding claim 50, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

1. Claim 70 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what tube is being referred to.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 50-59, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath (US 5437629). Goldrath discloses a fluid delivery system comprising a single unidirectional peristaltic pump 36, a liquid supply means 16, a patient conduit 7, a drain line 44, two hub chambers 12, 24, valve means, an enter line 35, and exit line 38, several supply ports 16,

50, and a warmer system 24. The device is capable of being attached to different kinds of liquids.

3. Claim 50 differs from Goldrath in calling for the first line to include the liquid supply means, the liquid distribution system, the pump, the liquid distribution system and the patient conduit. Goldrath discloses these elements in a different order. It would have been obvious to have the pump located in any position within the line because the device is a closed loop and the pump functions only to move fluid against gravity. The device would work equally well with the pump located between the supply means and the patient conduit or with the pump located before the liquid supply means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath to achieve the device of claim 50 because such a modification would have been an obvious design choice.

4. Claim 60-63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Dominiak et al (US 5478211). Claim 60 differs from Goldrath in calling for the pump and distribution system to form a single cartridge. Claim 62 calls for the hubs to be within one part. Claim 67 calls for a cartridge loading means. Dominiak teaches an infusion pump having the pump and distribution system contained in a cartridge so that the patient can be ambulatory while receiving the infusion. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath so that the system is contained in a cartridge so that the patient can be ambulatory.

5. Claim 61 differs from Goldrath in calling for vibration attenuation means. Dominiak teaches an infusion pump having a vibration attenuation means to prevent unnecessary wear and tear on the pump (Col. 17, lines 29-31). Therefore, it would have been obvious to one of

ordinary skill in the art at the time of invention to modify the device of Goldrath to have a vibration attenuation means as taught by Dominiak to prevent wear and tear on the pump.

6. Claims 64, 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Lavender (US 4980054). Claims 64, 65 differ from Goldrath in calling for the hub to have a flexible membrane including the valve elements. Lavender teaches a fluid pump comprising membranes that control the opening and closing of the valves so that the flow of the fluid can be controlled (Col. 20, lines 18-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath to have membranes and valves as taught by Lavender to control the flow of fluid.

7. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Lawless et al (US 5078362). Claim 66 differs from Goldrath in calling for the system to include an air sensor. Lawless teaches a fluid pump comprising an air sensor 60 that detect the presence of air bubbles to prevent a harmful air embolism for being introduced into the patient (Col. 6, lines 48-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Goldrath to include an air sensor as taught by Lawless to prevent an air embolism from being introduced into the patient.

8. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldrath in view of Keshaviah et al (US 6074359). Claim 69 differs from Goldrath in calling for a pressure sensor. Keshaviah teaches a system for performing fluid administration comprising a pressure sensor that measures the fluid line pressure (Col. 5, lines 27-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of

Goldrath to include a pressure sensor as taught by Keshaviah to measure the pressure in the fluid line.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/565,782
Art Unit: 3763

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763



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